



OFFICE OF THE TOWN CLERK

6591 ORANGE DRIVE • DAVIE, FLORIDA 33314-3399
PHONE: 954.797.1023 • FAX: 954.797.1087 • WWW.DAVIE-FL.GOV

Town Council Agenda Report

TO: Mayor and Councilmembers

FROM: Russell C. Muniz, Acting Assistant Town Administrator

SUBJECT: Resolution

AFFECTED DISTRICT: District 4

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE PROPERTY LEASE AGREEMENT, BETWEEN THE WAGON WHEEL COFFEE ROASTER, INC. AND THE TOWN OF DAVIE, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The Wagon Wheel Coffee Roaster plantation which resides on Town-owned property located generally between Waverly Park to the north, Muvico to the south and I-75 to the east, has experienced several acts of vandalism since its opening in 2005. As a result the proprietor J.C. Nadeu is requesting that a caretaker be allowed to remain on the premises to reduce the possibility of future vandalism to the property.

PREVIOUS ACTIONS: R-2005-100

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S): Motion to approve the resolution.

ATTACHMENT(S): Resolution, Exhibit A – Amended Lease Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE PROPERTY LEASE AGREEMENT, BETWEEN THE WAGON WHEEL COFFEE ROASTER, INC. AND THE TOWN OF DAVIE, FLORIDA, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town entered into a property lease agreement with Wagon Wheel Coffee Roaster, Inc. in April of 2005 to allow the cultivation of a coffee plantation on the site; and

WHEREAS, several acts of vandalism have occurred to the coffee seedlings on the vacant property; and

WHEREAS, the success of growing such a new and innovative crop will have a significant positive impact on the South Florida agricultural industry, and will highlight the Town of Davie's agricultural spirit and history to the world; and

WHEREAS, in an effort to help ensure the success of the coffee plantation the Town is desirous of amending the lease agreement so that a caretaker can reside on the property thereby reducing the likelihood of vandalism to the coffee crops.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

Section 1. The Town of Davie and Wagon Wheel Coffee Roaster, Inc. agree to amend the existing lease agreement to allow a caretaker to reside on the property.

Section 2. The terms and conditions for this approval are specified in the amended agreement attached as Exhibit A.

Section 3. The Town authorizes the Mayor to enter into the attached property lease agreement with the Wagon Wheel Coffee Roaster, Inc.

Section 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2006.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006.

LEASE AGREEMENT

This is a lease agreement, made and entered into by and between: **TOWN OF DAVIE**, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as “TOWN”, and **WAGON WHEEL COFFEE ROASTER, INC.** whose address is: 5453 NW 24th Street, Margate, Florida 33063, hereinafter referred to as “Lessee”.

TOWN owns certain land located within the municipal boundaries of TOWN and more fully described within Exhibit “A” and in the public records of Broward County, State of Florida as follows:

Legal Description:

In consideration of the agreements, covenants, promises, representatives and warranties contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TOWN hereby leases to Lessee, and Lessee hereby leases from TOWN, the above referenced property on the following terms and conditions:

1. Rent. Lessee shall pay to TOWN the sum of five hundred dollars (\$500.00) for year 1 through year 3 as rent, paid in advance; the first of such payments is to be made upon the execution of this document and thereafter, on the anniversary date of the execution of this Lease each year for the first three (3) years of this Lease. In the fourth and fifth year of this Lease, Lessee shall pay to TOWN the sum of one thousand dollars (\$1000.00) annually. In the sixth through the tenth years of this Lease, Lessee shall pay to the TOWN the sum of two thousand dollars (\$2000.00) annually.
2. Term. The term of this Lease is for ten (10) years from the execution of this document and may be extended by TOWN for an additional five (5) year term upon the conditions and provisions negotiated by the parties. Any early termination of this Lease by Lessee shall be deemed a default of this Lease Agreement.
3. Effective Date. This Lease will become effective upon the parties’ execution of the Lease Agreement.
4. Purpose. The purpose of this Lease is to allow the Lessee to utilize the property for the sole purpose of conducting agricultural activities consistent with the utilization of the property as a “coffee plantation” on said property. It is further acknowledged that Lessee shall utilize Best Management Practices as promulgated by the State of Florida and utilize organic pesticides and fertilizers solely.
5. Lessee’s Rights and Obligations: For the duration of this Lease, Lessee has the exclusive right to enter onto the property for the purpose of conducting agricultural activities consistent with the use of the property as a coffee plantation. Lessee shall be obligated to maintain said property in good condition and in a manner consistent with he

Town of Davie's Code of Ordinances. Lessee shall make no improvements to the property unless approval for such improvement is granted by TOWN. It is acknowledged by the parties hereto that the residential properties are within the immediate vicinity of the subject property and accordingly, the Lessee shall make all efforts not to disturb the peace of the neighborhood residential properties. It is further agreed by the Lessee that Lessee shall bring any and all equipment or items necessary for the production of the coffee plantation unto the property at a time designated by TOWN and Lessee and shall refrain from bringing equipment or items unto the subject property at any time not agreed upon by TOWN and Lessee. Town and Lessee agree to allow a caretaker to live on premises for the purpose of providing protection of the property. Caretaker may reside in a trailer brought onto the property provided by Lessee, however no water or sewer hoochups will be allowed on site, and all waste must be removed from site. All applicable permits required by the Town shall be paid for by Lessee. Upon application for said permit, Lessee will be required to demonstrate Lessee's plan for waste removal. Upon the termination of this Lease and upon the request of TOWN, Lessee shall remove all improvements, including trees, structures and any other items and/or objects placed by Lessee upon the subject property. Additionally, Lessee shall ensure no offensive odors are emitted from the subject property.

6. Lessee's Hold Harmless. Lessee shall protect, defend, indemnify and hold TOWN, its officers, and employees harmless against any and all claims, liabilities, loss, costs, or damages, whatsoever, related to any claim made by third parties, including court costs and attorney's fees, resulting from or in connection with Lessee's maintenance or failure to maintain the property or resulting as a consequence of any activities that Lessee conducts on the property. Nothing written herein shall be construed to grant any rights to third parties to sue any party to this Lease for any matter arising out of this Lease or shall be construed as a waiver of sovereign immunity by TOWN where sovereign immunity may be applicable.

7. Security Bond. Upon the execution of this Lease Agreement, Lessee shall deliver to TOWN as security in a form acceptable to TOWN (an irrevocable letter of credit with an institution and in a form acceptable to TOWN or in the form of cash), a security bond in an amount equal to twenty thousand dollars (\$20,000.00).

Upon default by Lessee, including early termination of this Lease, damages to property and or Lessee's failure to remove improvement placed on the property, TOWN will call upon and utilize the security bond for the removal of all improvements not removed by Lessee upon the termination of this Lease Agreement any amounts due to TOWN under this Agreement and/or any damages to the Leased Property caused by Lessee's actions or omissions. If this Lease is terminated by Lessee without fault, the security bond will be returned to the Lessee.

8. Insurance. Lessee shall obtain insurance on the property in the amount of one million dollars (\$1,000,000.00) that shall cover liability for bodily injury and property damage. Lessee shall provide proof of certification of insurance naming Lessor as an additional insured.

9. Termination. In the event that Lessee's "coffee plantation" activities are discontinued for a period of six months or more, this Lease shall terminate and Lessee shall be deemed to be in default as set forth within Section 7 above.

10. Entire Agreement. This Lease contains the entire agreement between the parties for the purposes described herein and supercedes all prior agreements regarding the lease of the property. The terms of this Lease are contractual and binding upon the parties. No modification of this Lease shall be binding upon either party unless reduced to writing and signed by both parties.

11. Fees and Costs. In the event either party brings an action or proceeding to enforce or construe this Lease or any action or proceeding otherwise arising out of this Lease, the prevailing party in such an action or proceeding shall be entitled to recover its costs and expenses of suit and any appeal and review, including reasonable attorney fees from the losing parties.

12. Governing Law. This Lease is governed by and construed under the laws of the state of Florida as to matters of procedure and substantive law. All controversies or legal problems arising out of this transaction and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventh Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.

13. Recordation. This Agreement shall be recorded in the public records of Broward County.

14. Notice. All notices or requests required or permitted under this Lease must be given in writing and may be delivered in person or by United States mail, postage prepaid, first class and certified, return receipt requested, and addressed as follows:

For Town:
Ken Cohen, Assistant Town Administrator
6591 Orange Drive
Davie, Florida 33314

For Wagon Wheel Coffee Roaster, Inc.:
5453 NW 24th Street
Margate, Florida 33063

15. Rules of Construction. The terms and provisions set forth within this Lease are deemed to have been explicitly negotiated between and jointly drafted by the parties. The resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

16. Severability. If any term or provision of this Lease, or the applicability of a term or provision to any person is to any extent invalid or unenforceable, the remainder of this Lease is not affected and continues in full force and effect.

17. Successors and Assigns. Lessee may not assign this Lease without being granted prior written consent by TOWN. Lease shall be binding upon all parties and their permitted successors in interest and assigns.

18. Waiver. No failure of either party to exercise any right or power given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice or the parties which conflicts with any terms of this Lease shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

IN WITNESS WHEREOF, the parties have made and executed this Lease Agreement on the respective dates under each signature: TOWN OF DAVIE through its TOWN COUNCILMEMBERS, signing by and through its MAYOR, authorized to execute same by COUNCIL ACTION ON THE ____ DAY OF _____, 2006 and CITY signing by and through its MAYOR, authorized to execute same by Commission action on the ____ DAY OF _____, 2006.

TOWN

TOWN OF DAVIE

By _____

Attest:

____ day of _____, 2006

Town Clerk

By _____
Town Administrator

____ day of _____, 2006

APPROVED AS TO FORM:

Town Attorney

Witness my hand and seal this ____ day of _____, A.D., 2006.

Signed, sealed and delivered
in the presence of:

LESSEE:

Witness

Print/Type Name

Witness

Print/Type Name

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____,
2006, by _____, who is personally known to me or who has produced
_____ as identification and who did/did not take an oath.

Notary

Public, State of Florida, at Large

Print, Type or Stamp Name

My Commission Expires:

EXHIBIT “A”

LEGAL DESCRIPTION

All of Parcel “F” “Waverly Hundred” as recorded in Plat Book 141 at Page 40 of the Public Records of Broward County, Florida, said land lying and being in Section 4, Township 51 South, Range 40 East